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Honorable Fred Van Sickle

UNITED STATES DISTRICT COURT

EASTERN DISTRICT COURT OF WASHINGTON

DOUGLAS L. STANLEY,

Plaintiff,

v.

US AIRWAYS, INC.,

Defendant.

NO. 09-CV-5003-FVS

**AGREED PROTECTIVE
ORDER**

This matter came before the Court on the stipulation of the parties for the entry of an order governing the disclosure and handling of documents that any party considers trade secrets, confidential, or proprietary business information.

In order to preserve and maintain the confidentiality of certain information to be disclosed in this action, it is hereby stipulated that:

AGREED PROTECTIVE ORDER - 1
(Cause No. 09-CV-5003-FVS)

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2 1. The parties have a mutual interest in prompt and orderly
3 discovery, and have discussed their concerns about the propriety of
4 designating trade secret or confidential business information. Having
5 weighed the issues related to having the Court decide the propriety of a
6 confidential designation, the following compromise has been reached
7 and is set forth below.
8

9 2. Documents to be produced by any party in this litigation that
10 contain confidential trade secret or proprietary business information
11 shall hereafter be referred to as "Protected Documents." When used in
12 this order, the word "documents" means all written material, videotapes,
13 and all other tangible items, whether produced as hard copy, computer
14 diskette, CD-ROM, or otherwise. The designating party will visibly
15 mark all Protected Documents "Subject to Protective Order" or
16 "Confidential." Material designated as Protected Documents shall be
17 given confidential treatment as described below.
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19 3. The producing/designating party has the burden of proving
20 that a Protected Document contains trade secrets or other confidential
21 business or technical information should any party seek to disclose the
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2 document or its contents outside the parameters of this order. Prior to
3 designating any material as protected, the producing/designating party
4 will make a good faith determination that the material is, in fact, a trade
5 secret or other confidential or proprietary business or technical
6 information, the dissemination of which could damage the
7 producing/designating party's competitive position. If any party to this
8 litigation disagrees with the "Subject to Protective Order" or
9 "Confidential" designation of any document, the party shall notify the
10 producing/designating party in writing, which then will timely apply to
11 this Court to set a hearing for the purpose of establishing that said
12 document contains trade secrets or is otherwise confidential or
13 proprietary. Any document marked as "Subject to Protective Order" or
14 "Confidential" shall continue to be treated as a Protected Document
15 pending determination by the Court as to its confidential or proprietary
16 status.
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19 4. Both the Protected Documents and the information contained
20 therein shall be treated as confidential. Except upon the prior written
21 consent of the producing/designating party or upon order of this Court,
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1
2 the Protected Documents and the information contained therein may be
3 shown, disseminated, or disclosed only to the following persons:

4 (a) Counsel of record for each party in this lawsuit, including
5 other members of counsels' law firms and any other counsel of record
6 associated to assist in the preparation or trial of this case;

7
8 (b) Employees of counsel of record who assist in the
9 preparation or trial of this case;

10 (c) Experts and non-attorney consultants retained by the
11 parties to this litigation for the preparation or trial of this case, provided
12 that no disclosure shall be made to any expert or consultant who is
13 employed by a competitor of the producing/designating party;

14
15 (d) Any party to this litigation;

16 (e) Any mediator(s) retained by the parties to assist with the
17 potential settlement of this lawsuit; and

18 (f) The Court and its staff in accordance with paragraph 6
19 below.

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21 5. Before receiving access to any of the Protected Documents or
22 the information contained therein, each person described in paragraph

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2 4(c) above shall be advised of the terms of this order, shall be given a
3 copy of this order, and shall agree in writing, in the form attached hereto
4 as "Exhibit A," to be bound by its terms and to submit to the jurisdiction
5 of this Court. Counsel for the parties shall retain the signed "Exhibit A"
6 forms and keep a list of all persons who have received Protected
7 Documents for inspection by the Court and, on order of the Court,
8 counsel for the producing/designating party.
9

10 6. Any party seeking to file documents marked "Subject to
11 Protective Order" or "Confidential" shall first provide the party who
12 produced the documents an opportunity to file a motion to seal the
13 documents. If the producing party files a motion to seal within fourteen
14 (14) days of the date of receipt of notice of intent to file such documents,
15 the other party shall refrain from filing the documents until the Court
16 rules on the motion to seal. If the party who produced the documents
17 does not file a motion to seal within fourteen (14) days of the date of
18 receipt of notice of intent to file such documents, that party shall be
19 deemed to have waived any objection to filing such documents without
20 first sealing them. The parties further agree to cooperate, as reasonably
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22

23 AGREED PROTECTIVE ORDER - 5
24 (Cause No. 09-CV-5003-FVS)
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2 necessary, to provide the Court the necessary information upon which a
3 determination regarding whether compelling circumstances exist to seal
4 any such document(s). Regardless of whether a motion to seal is
5 brought or granted, any party filing documents marked "Subject to
6 Protective Order" or "Confidential" shall excerpt and file only the
7 particular pages cited and relied upon, and, with respect to each page
8 filed, shall redact portions not relied upon.
9

10 7. To the extent the Protected Documents or information
11 contained therein are used in the taking of depositions, such documents
12 or information shall remain subject to the provisions of this Protective
13 Order, along with any transcript pages of the deposition testimony
14 dealing with the Protected Documents or information, or any transcript
15 pages which a party designates as confidential (with written notification
16 thereof to counsel for the remaining parties) within 20 days of receipt of
17 the deposition transcript. Any court reporter or transcriber who reports
18 or transcribes testimony in this action shall ensure that all Protected
19 Documents or information designated under this order remain
20 confidential and shall not be disclosed by them, except pursuant to the
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2 terms of this order, and that any notes or transcriptions of such
3 testimony (and any accompanying exhibits) shall be retained by the
4 reporter under the terms of this Protective Order or delivered to counsel
5 of record.

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7 8. This order shall not apply to the disclosure of Protected
8 Documents or the information contained therein at the time of trial, or in
9 any appeal thereof, through the receipt of Protected Documents into
10 evidence or through the testimony of witnesses. The closure of trial
11 proceedings and sealing of the record of a trial involve considerations
12 not presently before the Court. These issues may be taken up as a
13 separate matter upon the motion of any of the parties at the threshold of
14 or during trial.

15
16 9. Inadvertent or unintentional production of documents
17 containing information that should have been marked "Subject to
18 Protective Order" or "Confidential" shall not be deemed a waiver in
19 whole or in part of the producing party's claim of protection or
20 confidentiality.

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22 10. No party, nor that party's counsel or experts or any other

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2 person retained by the party to assist in the preparation of this action,
3 shall under any circumstances sell, share, advertise, or publicize the
4 contents of Protected Documents.

5 11. This order may not be waived, modified, abandoned, or
6 terminated, in whole or in part, except by an instrument in writing
7 signed by the parties and approved by the Court. If any provision of this
8 order shall be held invalid for any reason whatsoever, the remaining
9 provisions shall not be affected thereby.
10

11 12. This order shall be binding upon the parties hereto, upon
12 their attorneys, and upon the parties' and their attorneys' successors,
13 executors, personal representatives, administrators, heirs, legal
14 representatives, assigns, subsidiaries, divisions, employees, agents, and
15 independent contractors.
16

17 13. Within 90 days after the conclusion of this litigation
18 (including any appeals), counsel for each receiving party shall provide to
19 the producing/designating party written certification that all Protected
20 Documents, transcripts, and copies thereof, including all electronic
21 versions, have been destroyed. In the event information protected
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2 pursuant to this order is placed into any digitized or other computer
3 readable format, counsel for the receiving party shall certify to the
4 removal of such documents from any and all computers and electronic
5 storage devices.

6
7 14. The Court retains jurisdiction over the parties and recipients
8 of the Protected Documents for the enforcement of the provisions of this
9 order following termination of this litigation.

10 DATED this 24th day of July, 2009.

11 s/ Fred Van Sickle
12 FRED VAN SICKLE
13 UNITED STATES DISTRICT JUDGE
14

15 **AGREED AND APPROVED BY:**

16 Dated: July 22, 2009 RETTIG OSBORNE FORGETTE
17 Attorneys for Plaintiff

18 By: s/ Diehl R. Rettig (per Electronic Authority)
19 Diehl R. Rettig
20 WSBA No. 792
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23 AGREED PROTECTIVE ORDER - 9
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Dated: July 22, 2009

MILLS MEYERS SWARTLING
Attorneys for Defendant

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AGREED PROTECTIVE ORDER - 10
(Cause No. 09-CV-5003-FVS)

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EXHIBIT A

AFFIDAVIT OF _____,

being duly sworn and personally appearing before the undersigned
attesting officer, duly authorized by law to administer oaths, deposes
and says that the within statements are true and correct:

1. I have read the agreed protective order attached hereto and I
understand its terms.

2. I agree that my signature below submits me to the
jurisdiction of the United States District Court for the Eastern District of
Washington in which the action of *Stanley v. US Airways*, Case No. 09-
CV-5003-FVS, is pending. I further agree to be bound by the provisions
of the agreed protective order, including to all promises undertaken in
the order, as if originally agreed by me.

FURTHER AFFIANT SAYETH NOT

Dated: _____ By: _____

(Print Name)

Sworn and subscribed to before me
this ____ day of _____, 200____.
Residing at: _____
My Commission Expires: _____